

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1828/ND/2019.

In the matter of

Mrs. Kabita Barik
143, UGF, Savitri Nagar
New Delhi 110 017.

Mr. Jogendra Nmath Barik
143, UGF, Savitri Nagar
New Delhi 110 017.

Mr. Amit Barik
143, UGF, Savitri Nagar
New Delhi 110 017.

.....Operational Creditors

VERSUS

ATUL VATIKA DEVELOPERS PVT LTD
308 (Old No.135), Village Maidan Garhi
DELHI -110 068
CIN No. U45300DL2012PTC34778.

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 11.10.2019

CORAM:

JUSTICE (RETD) RAKESH DAYAL KHARE, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv. Tariq Khan and Adv Akash Chatterjee for the Petitioner

None present for the Respondents

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.

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2. The respondent (herein referred as the Corporate Debtor) executed an Agreement to sell property bearing No. A-3, Upper Ground Floor, measuring 105 square yards approx. which is part of property bearing no. B-85, erected on a plot of land measuring 400 sq. yards comprising out of Khasa no.150, Panchsheel Vihar, Malviya Nagar, New Delhi 110 017 for a total sale consideration of Rs.57,00,000/- (Rs. Fiftyseven lakhs only). The petitioner jointly made the payment amounting to Rs.48,51,000/- to the Corporate Debtor M/s. Atul Vatika Developers Pvt Ltd, Delhi through various transactions by cheque as well as RTGS transfer.
3. The respondent failed to handover the said property to the petitioner and therefore, the same Agreement to Sell was cancelled vide Agreement dated 01.12.2018. The Corporate Debtors agreed to refund the amount paid in advance within one month but no payment was made to the petitioner.
4. The petitioner served Demand notice dated 20.03.2019 on the Corporate Debtor U/Sec.8 of the Insolvency & Bankruptcy Code, 2016 seeking refund of payments within 10 days from the date of receipt of the notice. The respondent on receipt of notice dated 20.03.2019 issued 7 post dated cheques on 03.05.2019 having date of 15.05.2019 till 15.07.2019 in the name of Kabita Barik, Joginder Nath Barik and Amir Barik. The first two cheques in the name of petitioner no.3 & 2 respective were dishonored on presentation due to "Account Blocked" and when the same was brought to the notice, the

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respondent stated that for the first two cheque which had been dishonored, the amount would be paid through RTGS and for the remaining cheques issued fresh 5 post-dated cheques in favor of the petitioner on 17.05.2019 from a different account. However, no payment was made by RTGS and all the cheques have been dishonored on presentation due to "Insufficient Funds".

5. The Petitioner has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 48,51,000/- plus interest charged at 18% p.a. which fell due on 01.12.2018.
6. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.
7. As per the averments of the petitioners the Corporate Debtors did not make the payment against the dishonored cheques in default of the payment. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence were proceeded ex-parte vide order dated 03.09.2019. The present petition being filed in March, 2019 is within the limitation, being within three years from the date of the cause of action. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent.

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Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;*

(c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Further:

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating

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Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

8. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Mahender Kumar Khandelwal, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00033/2016-17/10086 email- mahender.khandelwal@pwc.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
10. Petition is therefore admitted.

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SUMITA PURKAYASTHA
Member (T)

-Sd/-
JUSTICE RAJESH DAYAL KHARE
Member (J)